

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

FRANK ROY,
Plaintiff,

v.

WAL-MART,
Defendant.

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:
: Civil Action No.
: 13-4256 (RMB/JS)
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: **MEMORANDUM ORDER**
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BUMB, UNITED STATES DISTRICT JUDGE:

On June 4, 2013, Plaintiff Frank Roy filed a Complaint (the "Complaint") against Defendant Wal-Mart ("Wal-Mart"). On July 11, 2013, Wal-Mart removed this matter to the United States District Court for the District of New Jersey on the basis of diversity of citizenship pursuant to 28 U.S.C. § 1332.

Although the Complaint does not set forth the nature of the claims, Defendant Wal-Mart has interpreted Plaintiff's claims as theft by deception under the New Jersey Code of Criminal Justice, N.J.S.A. §§ 2C:20-4, and violations of Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, et seq., and the New Jersey Law Against Discrimination, N.J.S.A. §§ 10:5-12. Plaintiff has not disputed Wal-Mart's interpretation of his claims.

Wal-Mart then filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) [Docket No. 6], which this Court granted,

finding that the Complaint contained nothing more than bald assertions, and Plaintiff had not alleged enough facts to state a claim that was plausible on its face. [Docket No. 11]. Pursuant to this Court's Order, entered on October 2, 2013, Plaintiff was directed to file an amended complaint curing the deficiencies identified within twenty (20) days of the entry of that Order. The Court further ordered that, if Plaintiff failed to file an amended complaint within twenty (20) days of the date of entry of that Order, Plaintiff's Complaint would be automatically dismissed for failure to state a claim upon which relief can be granted.

Instead of filing the amended complaint as directed, within the time period directed, the Plaintiff filed a Motion for Summary Judgment [Docket No. 12], based on the allegations contained in his Complaint as already dismissed by this Court. Thus, for the reasons previously stated in this Court's October 2, 2013 Order and because Plaintiff has failed to file an amended complaint as directed:

IT IS HEREBY on this 28th day of October 2013,

ORDERED that Plaintiff's Motion for Summary Judgment is **DENIED**; and it is further

ORDERED that the Plaintiff's Complaint is **DISMISSED without prejudice** and the Clerk of the Court is directed to administratively terminate this matter, subject to re-opening as set forth below; and it is further

ORDERED that Plaintiff shall have a third and final opportunity

to file an amended complaint curing the deficiencies identified by this Court and re-open this matter within (20) days of the date of entry of this Order.

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge